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ABSTRACT

This report explores some issues in the distribution of educational services to students in the tri-county area and Michigan as a whole. Specifically, it examines the allocation of two important indices of educational opportunity measured by the State Department of Education's Educational Assessment Program: classroom teachers per 1000 pupils, and professional instructional staff per 1000 pupils. First, it analyzes disparities in the provision of services to white and minority students in the State and tri-county area. Secondly, it explores the Constitutional implications of the distribution of these resources. Analysis and data are presented, it is asserted, which indicate that the Michigan system for providing certain important public education services, specifically teachers and professionals, delivers those services in a way that produces significant disparities between minority and white students. The legal analysis is considered to clearly demonstrate that such a system is constitutionally defective unless the State can show the disparity is the necessary by-product of furthering some compelling State interest. Consequently, it is argued, the present system for providing educational services in Michigan most probably violates the equal protection clause of the U.S. Constitution. (Author/JM)

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Distribution Of Teachers and Professionals To Students In The Tri-County Area And Statewide

A Staff Report To The Constitutional Mandate Committee Of The Detroit Education Task Force

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TABLE OF CONTENTS

		Page
I.	INTRODUCTION	1
II.	THE DATA	1
	A. Tri-County Area	
	1. Teachers Per 1000	2
	2. Professionals Per 1000	4
	B. State-Wide	
	1. Teachers Per 1000	5
	2. Professionals Per 1000	6
	C. Summary	8
III.	LEGAL ANALYSIS	9
	A. The State's Responsibility for Providing Educational Services	9
	B. What is Required by the Fourteenth Amendment Equal Protection Clause	11
	C. Racial Discrimination in the Provision of Educational Services	11
	D. The Use of Statistical Data in Proving Racial Discrimination in Other Contexts	17
	E. Purpose, Motive and Effect	19
	F. Summary	21
IV.	CONCLUSION	22

I. INTRODUCTION

This report explores some issues in the distribution of educational services to students in the tri-county area and Michigan as a whole. Specifically, it examines the allocation of two important indices of educational opportunity measured by the State Department of Education's Educational Assessment Program: classroom teachers per 1000 pupils, and professional instructional staff per 1000 pupils.

First, it analyzes disparities in the provision of these services to white and minority students in the State and tri-county area. Secondly, it explores the Constitutional implications of the distribution of these resources.

The report finds that, in terms of the selected resources, minority students fare worse than white students in the tri-county area and the State as a whole. The report concludes that this disparate treatment may deny minority school children equal protection of the laws.

II. THE DATA

The Michigan Educational Assessment Program (MEAP) was initiated by the State Board of Education, and authorized by statute. MCLA 388.1081 et. seq. Its purpose is to provide information useful both to citizens and educators in improving education for Michigan. Reading and mathematics achievement tests are administered to fourth and seventh graders each year. In addition, "human resource" data for the local districts is compiled from what is commonly known as the Fourth Friday Report (Form DS 4061).

Teachers per 1000 pupils, as measured by the MEAP, represents the number of elementary and secondary classroom teachers per 1000 pupils in grades 1-12. Kindergarten teachers, special education teachers and non-classroom teachers are excluded. Similarly, special education and kindergarten pupils are not included.

Professional instructional staff per 1000 pupils includes elementary and secondary staff in the following categories: principals, assistant principals, other administrators, consultants and supervisors, classroom teachers, librarians, audio-visual staff, guidance personnel and school counselors, psychological staff, radio and television instructional staff, teachers of the homebound and other instructional staff.

It is the availability of these "human resources" that is analyzed in this report.

A. Tri-County Area[1]

1. Teachers Per 1000

In the tri-county area, teachers per 1000 pupils range from a low of 36.1 in Pontiac to a high of 53.5 in Taylor. The district average for the tri-county area is approximately 42.1. Detroit, with 36.9 teachers per 1000 pupils, ranks fifth from the bottom of 82 districts. The effect of this distribution on the minority student population of the tri-county area is summarized in charts 1 and 2. Ninety percent of the minority student population of the area as a whole goes to schools in Detroit and Pontiac. Thus, nearly 90 percent of the area's minority students attend school in districts which rank in the lowest sixth percentile in classroom teachers per 1000 pupils. Slightly less than 20 percent of the white population attend school in these lowest five districts.

[1]The tri-county area, Wayne, Oakland and Macomb counties, contains over 900,000 students: nearly 45 percent of the student population of the state as a whole.

At the top of the scale are Taylor (53.5), Oak Park (50.5), River Rouge (50.2), Dearborn (48.6) and Southfield (47.3). These districts contain nearly nine percent of the white population of the tri-county area, but contain less than one percent of the minority population.

If teachers per 1000 are inverted to yield pupil-teacher ratios, the data indicates that those who go to school in the lowest five districts have a pupil-teacher ratio of nearly 28 to 1 whereas those in the top five districts have a pupil-teacher ratio of 20 to 1. The district average is approximately 24 to 1.

Translating percentages into probability, the probability of a minority child going to school in districts with the 5 lowest pupil-teacher ratios is 4.5 times greater than that for a white child. Conversely, the probability of a white child going to school in districts with the five highest pupil-teacher ratios is 9 times greater than that for a minority child.

Between the sixth and ninety-fourth percentile are 71 percent of the tri-county white students and 9 percent of the tri-county minority students. Thus, the probability of a white child attending school in these districts is 8 times greater than that for a minority child.

In terms of the racial composition of the tri-county area, one finds that, although minority students comprise only 26 percent of the tri-county minority student population, they comprise approximately 60 percent of the students in the lowest five districts. Conversely, minority students comprise only three percent of students in the top five districts and approximately five percent of students in the middle range.

Moreover, if teachers hired with federal Title I funds[2] are excluded from the calculation,[3] Pontiac and Detroit, and thus 90 percent of the area's minority students, rank first and second from the bottom in the tri-county area. Because Title I monies are intended to be compensatory in nature and not to provide a substitute for state provided resources, it is appropriate in looking at the State's allocation of resources to discount teachers hired with these funds. In addition, exclusion of Title I teachers widens the gap between Detroit and Pontiac and both the tri-county average and districts at the top. Thus Pontiac drops from 36.1 to 34.6 and Detroit drops from 36.9 to 34.9. The tri-county mean drops less dramatically from 42.1 to 41.4. The top two districts, Taylor and Oak Park, drop from 53.0 to 52.5 and 50.3 to 50.2 respectively, thus leaving a gap of over 15 teachers per 1000 pupils between the bottom and top two districts.

2. Professionals per 1000

With respect to professional instructional staff per 1000 pupils, the situation in the tri-county area is much the same.[4] Detroit and Pontiac rise to below the lowest 15th percentile at 43.9 and 44.5 respectively. Oak Park is first at 65 and the local district mean is approximately 49.4.

[2]20 USC 241 a

[3]Calculations for each district teachers per 1000 pupils were adjusted by taking the number of full time equivalent teachers hired per 1000 students with Title I funds. Source: Department of Education data printout for Product Evaluation Forms RE 4317. Although this data is for 1973-74, it is reasonable to assume that Title I staffing patterns have not changed.

[4]Because teachers are a part of this measure, the similarity in rankings is somewhat predictable

The effect of these rankings on the minority population is summarized in charts 3 and 4. Again, approximately 90 percent of tri-county minority pupils go to school in districts whose professional instructional staff per 1000 ranks in the lowest 15th percentile, whereas only 23 percent of the white population attends schools in similar districts. This means that students attending school in the lowest 15th percentile districts are approximately 57 percent minority students. At the top fifteenth percentile are nearly 12 percent of the white population and approximately 4.5 percent of the minority population. In terms of the total racial composition, less than 11 percent of this group are minority students, although, as noted above, 26 percent of the area population are minority students. The statistics concerning the top fifteenth percentile in professional instructional staff are particularly important because they include both River Rouge and Highland Park, two districts with substantial percentages of minority students. It is important to recognize, however, that these districts contain less than four percent of the tri-county minority population. Thus, in terms of total numbers, they do little to affect the total tri-county picture.

Looking at the middle range, the 16th to 85th percentile, one finds nearly 65 percent of the white population but only five percent of the minority population. The percentage of minority students in this group is slightly over 2 percent.

B. State-Wide

1. Teachers Per 1000

Statewide, Detroit and Pontiac both rank below the fifth percentile ranking of 37.3 teachers per 1000. Districts with teachers per 1000 pupil ratios of 51.0 or above rank in the highest fifth

percentile. The statewide average is 43.2. The significance of statewide data for the minority population is shown in charts 5 and 6. At the statewide level, the Detroit and Pontiac districts comprise approximately 60 percent of the total minority student population. However, merely 12 percent of the State's white student population attend schools in these districts. Thus the probability of a minority student attending school in these districts is five times greater than that for a white child.

In terms of statewide total racial composition, while about 16 percent of the State's total are minority students, nearly 48 percent of students in the lowest fifth percentile are minority students.

Many smaller districts are found at the other end of the scale, the highest fifth percentile. These districts contain approximately two percent of the white population, and approximately 0.4 percent of the minority population. Minority students comprise approximately 5 percent of this group of students.

In the middle range are over 85 percent of the State's white student population but less than 40 percent of the minority population. The chance of a minority student attending school in the middle range is less than half that for a white child. Less than eight percent of this middle range are minority students.

2. Professionals Per 1000

Detroit and Pontiac are, as in the tri-county area, in the lowest 15th percentile statewide. Districts with professionals per 1000 of 54.1 or above are in the highest 15th percentile. The statewide mean is 49.4.

In districts at the lowest 15th percentile, there are, as with classroom teachers per 1000, approximately 60 percent of the State's minority students. Only 19 percent of the State's white students attend school in these districts. Thus the probability of a minority child attending school in these districts is three times greater than that for a white child. The racial composition of this group is 38 percent minority students compared with 16 percent statewide.

At the other end of the spectrum, the highest 15th percentile, one finds approximately 12 percent of the white and 12 percent of the black population. Thus, the racial composition of this group is similar to the State as a whole--84 percent white and 16 percent minority students.

The top 15th percentile statistics, however, are somewhat misleading. Flint, which accounts for nearly 50 percent of the minority students in this group, is elevated in the ranking by professionals hired with federal Title I funds. Thus Flint, which has 54.7 professionals per 1000, hires 1.8 professionals per 1000 with Title I funds. Because most of the districts in the highest 15th percentile generally receive less federal funds per pupil than Flint, and therefore hire less personnel, it is reasonable to assume that Flint would drop out of the 15th percentile.[5]

[5]Flint ranks 30th out of 527 districts in redistributed federal funds per pupil. Most other districts in the top 15th percentile rank far below Flint. See Bulletin 1012, Michigan Dept. of Education (1974). While data for each local district have not been obtained, tri-county data indicate that districts in the highest 15th percentile hire less than .6 professionals per 1000. It is very likely, therefore, that Flint would drop in the rankings.

If Flint is excluded from the 15th percentile, only 6 percent of the minority student population would be found in this group. In addition, the racial composition would change from 84 percent white, 16 percent minority, to approximately 92 percent white, 8 percent minority.

In the middle range,[6] the sixteenth through the eighty-fifth percentile are 69 percent of the white population and 28 percent of the black population. The racial composition of this group is approximately 7 percent black.

C. Summary

The analysis presented in the foregoing sections is, of course, only one way of examining the data. Other analyses are possible, including some far more sophisticated than undertaken here. However, there is no escaping the fact that a minority student in the tri-county area today is 4.5 times more likely than a white student to be attending school in a district with 28 pupils for every teacher. Conversely, a white student is 9 times as likely as a minority student to be attending school in a district with as few as 20 pupils for every teacher. In between these extremes, one finds, as might be expected, the vast majority of the white student population (70 percent); however, tragically, only nine percent of the area's minority student population are as fortunate.

[6]Flint is left in the upper 15th percentile for the purposes of the calculation.

When teachers funded with federal Title I funds are factored out, the disparities become even more shocking.

Finally, when the analysis is expanded to the State level, the patterns found for the tri-county area are repeated, with only a minor variation in the disparities.

III. LEGAL ANALYSIS

The purpose of this section is to analyze the State's legal responsibility to provide for a system of educational services which does not result in any significant disparity in service offerings between minority and non-minority students. The analysis will consider the State's general responsibility for providing educational services, the requirements of the fourteenth amendment for providing equal educational opportunity, and the meaning of these requirements for the present system of providing educational services in Michigan.

A. The State's Responsibility For Providing Educational Services

Under Michigan law, responsibility for providing a free public school education rests, by constitutional mandate, with the State. 1963 Const., Art 8 § 2. Michigan courts repeatedly have emphasized that education in Michigan is a State responsibility.

> Control of our public school system is a state matter delegated and lodged in the State Legislature by the Constitution. The policy of the State has been to retain control of its school system, to be administered throughout the State under State laws by local State agencies organized with plenary powers to carry out the delegated functions given it by the Legislature.

School District of Lansing v State Board of Education, 367 Mich 591, 595 (1962).

Further, the State responsibility for education in Michigan is recognized in many acts of the legislature. The State extensively controls the financing of education. The legislature provides a substantial portion of most school districts' operating budgets with funds appropriated from the State's general fund revenues raised through state-wide taxation. MCLA 388.1101. The State's power of the purse can be and is in fact used to enforce the State's powers over local school districts. MCLA 340.575 (providing for pro-rata forfeiture of State aid funds for school years of less than 180 days). In addition, although local school districts obtain funds through local property taxation, the State has the responsibility to assure that all property valuations are equalized throughout the entire state. MCLA 211.34 and 310.681. The State also has established standards for teacher certification and teacher tenure, MCLA 340.569 and 340.851; determines the minimum qualifications of local school superintendents, MCLA 340.573; determines part of the required curriculum, MCLA 340.361, 388.371, 340.781 and 340.782; sets the minimum school term MCLA 340.575; approves bus routes, equipment, and drivers, MCLA 388.1171; approves textbooks, MCLA 340.887; and establishes procedures for student discipline, Op. Attorney General No. 4705, July 7, 1970; has the power to merge and consolidate school districts or transfer property from one district to another without the consent of the local school districts affected, MCLA 340.401 - .415, 340.431 - .449, 340.461 - .468.

As the foregoing demonstrates, whatever the State-local relationship of public education in other parts of the United States, it is clear that in Michigan local school boards and districts are mere agents of and subordinate to the State.

B. What Is Required by the Fourteenth Amendment Equal Protection Clause

The fourteenth amendment provides that "(n)o State shall ... deny to any person the equal protection of the laws."

Wherever state treatment of persons or groups creates either a "suspect classification" or impinges upon a "fundamental constitutional right," courts will examine the statutory scheme by a rigid standard of review known as "strict scrutiny." Examples of classifications which courts have traditionally regarded as "suspect classifications" are race, alienage and ancestry. See Loving v. Virginia, 388 U.S.1(1967); Graham v. Richardson, 403 U.S. 365 (1971); and Korematsu v. United States, 323 U.S. 214 (1944). Examples of fundamental rights include: voting, Reynolds v. Sims, 377 U.S. 533 (1964), the right to travel interstate, Shapiro v. Thompson, 394 U.S. 618 (1969); and the right to procreate, Skinner v. Oklahoma, 316 U.S. 535 (1942).

A merely reasonable relationship between the difference in treatment and a legitimate governmental interest will not salvage the scheme under attack. Rather, it must be shown by the state that the classification is necessary to further a compelling state interest.

C. Racial Discrimination in the Provision of Educational Services

Given the statistical information supplied in Section II, it appears that Michigan's system for providing educational services has a discriminatory impact on minority groups in violation of the equal protection clause of the fourteenth amendment. This racially discriminatory effect creates a suspect classification and thus the state must show a compelling state interest in maintaining the disparity in educational services.

This situation is thus clearly distinguishable from the recent United States Supreme Court decision, San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1973).

In Rodriguez it was contended that: (1) a system of school financing based upon local levies against real estate enabled those school districts with a high real estate valuation to raise and spend more revenue per pupil than those districts with a comparatively low total real estate valuation; (2), as a rule, children of the more affluent tended to live in school districts with high real estate valuation as opposed to children of poverty-stricken families who tended to live in districts with low real estate valuation; (3) that the amount of money expended per pupil in a school system has an effect upon the quality of education delivered to the children; and (4) that education was a fundamental right without which a citizen cannot effectively exercise the rights and duties of citizenship and therefore the equal protection clause should compel the state to spend the same amount of money on each of its children for the purpose of education. In rejecting this argument, the Court indicated it would not apply the "strict scrutiny" test because education was not a "fundamental interest" and because treating students from districts with relatively low taxable wealth differently from others did not create a "suspect classification." The Court, of course, clearly recognized that it was not dealing with a racial discrimination case, that is, a case involving a "suspect classification."

> It should be clear...that this is not a case in which the challenged state action must be subjected to the searching judicial scrutiny reserved for laws that create suspect classifications or impinge upon constitutionally protected rights.

411 U.S. at 40.

Further, the court impliedly recognized that, had it applied the standard of review requiring strict scrutiny, it would have reached a different result.

> Texas virtually concedes that its historically rooted dual system of financing education could not withstand the strict scrutiny that this court has found appropriate in reviewing legislative judgments that interfere with fundamental constitutional rights or that involve suspect classifications.

411 U.S. at 16.

Thus, the principles enunciated in Rodriguez do not condone a system for distributing educational services which has an adverse impact on minority school children. Those courts which have found racial discrimination in the allocation of educational services have required the state to equalize resources between white and minority children, even without a showing of a cause-effect relationship between the particular disparities and actual educational attainment.

Long before the Supreme Court's decision in Brown v. Board of Education 347 U.S. 483 (1954), outlawing segregation in the public schools, courts which condoned the maintenance of separate schools for black and white children commanded that these schools be equal. In Sweatt v. Painter, 339 U.S. 629 (1950), the Supreme Court held that a black student should be admitted to the University of Texas Law School, notwithstanding the fact that Texas had established a separate law school for black students. Previously, the Texas trial court had given the state six months to establish a separate law school with substantially equivalent facilities. After a time, the State did open a separate law school and both the trial court and Texas Appellate Court found the new law school sufficient. The U.S. Supreme Court reversed, holding that

> faculty, variety of courses and opportunity for specialization, size of the student body, scope of the library, availability of law review and similar activities, the University of Texas Law School is superior. What is more important, the University of Texas Law School possesses to a far greater degree those qualities which are incapable of objective measurement but which make for greatness in a law school. Such qualities, to name a few, include reputation of the faculty, experience of the administration, position and influence of the alumni, standing in the community, traditions and prestige. It is difficult to believe that one who had a free choice between these schools would consider the question close.

339 U.S. at 633-34.

Lower courts which dealt with claimed inequities in segregated primary and secondary education prior to Brown I employed much more specific criteria than those used in Sweatt. In Corbin v. the County School Board of Pulaski County, 177 F. 2d 924 (4th Cir 1949), the court noted differences in course offerings, laboratories and shop facilities, monetary value of equipment, presence and lack of auditoriums and gymnasiums, in finding that white facilities were superior to those attended by black school children. In Carter v. School Board of Arlington County Virginia, 182 F.2nd 531 4th Cir (1950), the court noted similar factors in finding that black schools were inferior to those attended by white children.

In Blue v. Public School District, 95 F. Supp. 441 (M.D.N.C. 1951), differences were found in black and white school systems. Of particular interest is the court's finding that white schools were less overcrowded and consequently that white children enjoyed better supervision, greater extra curricular activities, and more frequent individual attention. In Pitts v. The Board of Trustees of DeWitt Special School District, 84 F. Supp. 973 (E.D. Ark 1945), the court considered the situation of black students required to attend a school with only a "C" academic rating, while the white school located in the district enjoyed an "A" academic rating.

The court noted

> that there has been no showing here that any of the children of the plaintiffs, or any other children have suffered actual damage to their education by attending the "C" rated school, or that they would have obtained any better education at a school of higher grade.

Notwithstanding plaintiffs' inability to prove actual harm, the court required that defendants within a reasonable time improve the facilities of the class C school so that its rating would be increased to a grade A level.

More recently, in Hobson v. Hansen, 269 F. Supp. 401, 497 (DDC 1967), modified sub nom, Smuck v. Hobson, 408 F. 2d 175 (D.C. Cir 1969), the court observed that "if whites and blacks are to be consigned to separate schools pursuant to whatever policy, the minimum the Constitution will require and guarantee is that for their objectively measurable aspects these schools be run on the basis of real equality." (emphasis added)[7]

In Keyes v. School District No. 1, 313 F. Supp (D. Colo. 1970), the trial court was concerned with differences in services between predominantly minority core city schools and white schools in the rest

[7]The court also found that the infusion of federal educational dollars cannot compensate for discriminatory effects, observing that the federal aid to education statutes "are manifestly intended to provide extraordinary services at the slum schools, not merely to compensate for inequities produced by local school boards in favor of their middle income schools. Thus they cannot be regarded as curing any inequities for which the board is otherwise responsible." Further support for this view is offered by a series of decisions prohibiting deductions from state aid for districts receiving impacted area aid. These cases have held that such aid is intended as special assistance to local educational agencies and that to permit a reduction in state aid would violate the Congressional intent. Douglas Ind. School Dist. #3 v. Jorgenson, 293 F. Supp. 849 (1968), Hergenreter v. Haden, 295 F. sup. 251 (1968), Shepheard v. Godwin, 280 F. Supp. (1968), Carlsbad Union School Dist v. Rafferty, 300 F. Supp. 434 (1969). Affirmed 429 F. 2d 337 (1970).

of the city. Among those variables the court was concerned with were teacher experience, building facilities, dropout rate, and teacher turnover. The court concluded that, even though these were not de jure segregated schools requiring desegregation, equalization of services was required:

> The present state of the law is that separate educational facilities (of the de facto variety) may be maintained, but a fundamental and absolute requisite is that these shall be equal. Once it is found that these separate facilities are unequal in the quality of education, it is probable that a constitutional violation exists. This probability becomes almost conclusive where minority groups are concerned.
>
> Today a school board is not constitutionally required to integrate schools which have become segregated because of the effect of racial housing patterns on the neighborhood school system. However, if the school board chooses not to take positive steps to alleviate de facto segregation, it must at a minimum insure that schools offer an equal educational opportunity.

313 F. Supp 61, at 83 (1970). The Court of Appeals affirmed on this issue, 445 F 2d 990 (1971); the U.S. Supreme Court did not rule on this issue of the Denver litigation.

Most recently in Brown v. Board of Education of Chicago, 386 F. Supp. 110 (D Ill. 1974), the court accepted as evidence of discrimination objective data showing an expenditure differential of eight percent between non-Caucasian and Caucasian schools in 1969-70 and 1970-71. The court noted that, while the expenditure differential was small in amount, it was significant because it was "caused by the clustering of education benefits such as smaller classes and more educated, experienced teachers in white schools." 386 F. Supp., at 125. The case is particularly noteworthy in two respects. First, with respect to Rodriguez, supra, the court notes:

> The Rodriguez decision does not change the standard of review of state action where the aggrieved party can prove racial discrimination. Since race is a suspect classification, such state action must be measured under the compelling state interest test.

386 F. Supp. at 117.

The court went on to note that Rodriguez "supports the position here of the class of students who claim to have been discriminated against on the basis of race." 386 F. Supp. at 118.

Secondly, the court indicated that it would not be necessary to demonstrate the effect of differential expenditures on the educational process, noting:

> ..even if money had no clear impact on the quality of education, the equal protection clause would still require with respect to race that all students be afforded the same chance to discover that fact for themselves.

386 F. Supp. 121, n.3.

For over 25 years, in both the old "separate but equal" cases, and in more recent decisions, objective measures of educational services have been employed to determine whether minorities are receiving an equal educational opportunity as required by the equal protection clause of the fourteenth amendment.

D. The Use of Statistical Data in Proving Racial Discrimination in Other Contexts

Statistical data has been widely used in proving racial discrimination in violation of the equal protection clause of the fourteenth amendment. As the court observed in State of Alabama v. United States, 304 F 2d 583, at 586 (1962):

> In the problem of racial discrimination, statistics often tell much, and courts listen.

One line of precedent which demonstrates that statistical evidence alone can support a finding of prima facie racial discrimination is found in jury selection cases. The leading case in this area is Norris v. Alabama, 294 U.S. 587 (1934). There the Court took note of the proportion of blacks on grand and petit juries in relation to the

proportion of blacks in the general population, and held that the petitioners had established a prima facie case of racial discrimination in the selection of juries. The Norris approach has been followed in several jury selection cases: Whitus v. Virginia, 385 U.S. 545 (1946); Simms V. Virginia, 389 U.S. 404 (1967); Tuner v. Fouche, 396 U.S. 346 (1969); and Carter v. Jury Commission, 396 U.S. 320 (1970). In Carter, the court upheld the district court's finding of a violation of the equal protection clause where evidence showed that, in a county with a population of approximately 65 percent black residents, the jury selection list was composed of only 32 percent potential black jurors.

A similar analysis can be found in the field of employment discrimination. The leading case is Griggs v. Duke Power Co., 401 U.S. 424 (1971), holding that when a statistical proof was made that employment practices, including intelligence tests, discriminated against blacks, the burden of proof shifts to the defendant company to show that the questioned practice or test is related to job performance. In the more recent case of Afro-American Patrolman's League v. Duck, 503 F. 2d 294 (6th Cir. 1974), as to the issue of the usefulness of statistics in proving racial discrimination in the employment discrimination area, the court observed:

> Although the district court in this case specifically rested its finding on a combination of statistics and other evidence, we note that at least two circuits have held that a prima facie case of discrimination in hiring may be made on statistics alone. (emphasis added)

503 F. 2d, at 299.

In the employment discrimination field, most cases are brought under Title VII of the 1964 Civil Rights Act and not under the equal protection clause of the fourteenth amendment. Yet in the case of

United States v Chesterfield County School District, Chesterfield County South Carolina, 484 F 2d 70 (4th Cir 1973) the Fourth Circuit addressed itself specifically to this issue:

> Of course, Griggs, Robinson and Moody were decided under Title VII of the Civil Rights Act of 1964 and the instant case arises under the fourteenth amendment. But it has been held, and we think correctly, that the test of validity under Title VII is not different from the test of validity under the fourteenth amendment. (several citations).

Equally in Morrow v Crisler, 479 F 2d 960 (5th Cir 1973), it was held that the fact that there were no black patrolmen on the state force of Mississippi which had a black population of 36.7 percent was sufficient to support the conclusion of the District Court that the hiring practices of the department violated the equal protection clause of the fourteenth amendment.

With respect to employment in public education, statistical evidence has proved persuasive in evaluating faculty assignment policies. Numerous courts have held that, where it is possible to identify a school merely by the racial composition of its faculty, such facts establish a prima facie case of racial discrimination in the assignment of faculty and staff. Swann v. Charlotte-Mecklenberg Bd of Educ, 402 U.S. 1 (1971); Davis v. Board of School Commissioners, 402 U.S. 33 (1971).

E. Purpose, Motive and Effect

Finally, it should be noted that courts examining cases alleging racial discrimination have based their decisions on results and effects rather than the presence or absence of discriminatory intent. Thus, even if it is established that a legislative scheme is carried out in the complete absence of intentional discrimination, this fact alone will not render constitutional a system with discriminatory impact or effect.

The unequal treatment in the distribution of educational services experienced by Michigan's minority students is the effect of a state-controlled system of financing public education. Thus, whether or not the legislature intended to discriminate is not the appropriate test for a violation of the equal protection clause.

As the U.S. Supreme Court observed in Wright v. Council of the City of Emporia, 407 U.S. 451 (1972):

> ...as we said in Palmer v. Thompson 403 U.S. 217, 225 it is difficult to determine the sole or dominant motivation behind the choices of a group of legislators.....
> The existence of a permissible purpose cannot sustain an action that has an impermissible effect.

Similarly, where a statistical disparity was shown in the furnishing of some municipal services to black and white neighborhoods, the Fifth Circuit Court of Appeals held that such a disparity as evidenced by the statistical data presented, was a denial of equal protection of the laws under the fourteenth amendment, noting:

> In a civil rights suit alleging racial discrimination in contravention of the fourteenth amendment, actual intent or motive need not be directly proved. Having determined that no compelling state interests can be served by the discriminatory results of Shaw's administration of municipal services, we conclude that a violation of equal protection has occurred.

Hawkins v. Town of Shaw 437 F 2d 1286 at 1291 (5th Cir 1971)

Finally, in Brown v. Board of Education of the City of Chicago, the court noted that "it is not necessary in cases where the plaintiff attempts to prove structurally imposed racial discrimination to prove intent, motive, or purpose." 386 F Supp at 124.

Thus, regardless of the motives involved in Michigan's system of allocating educational resources, it would appear that the disparate treatment afforded minority school children denies them equal protection of the laws.

F. Summary

The State of Michigan's ultimate responsibility for the relative levels of educational services available to students throughout the State is beyond argument. That the State has chosen to discharge this responsibility through "local State agencies organized with plenary powers to carry out the delegated functions" in no way relieves the State of its ultimate responsibility for public education in Michigan.

The equal protection clause of the fourteenth amendment demands that the Michigan system for providing public education services do so in a way that avoids discriminatory impact on minority students. The U.S. Supreme Court's recent school financing decision did nothing to alter this principle, which was clearly recognized by the federal courts both before and after the U.S. Supreme Court outlawed segregated schools. Indeed, in its recent decision, the Supreme Court went out of its way to point out that the alleged discrimination did not involve a suspect classification, such as race.

There has been much ongoing debate among professionals as to whether objective measures of educational services are relevant in measuring educational opportunity. However, the federal courts, including the U.S. Supreme Court, have made it clear that such an

inquiry has no place in a case where those services are delivered unequally to white and minority students.

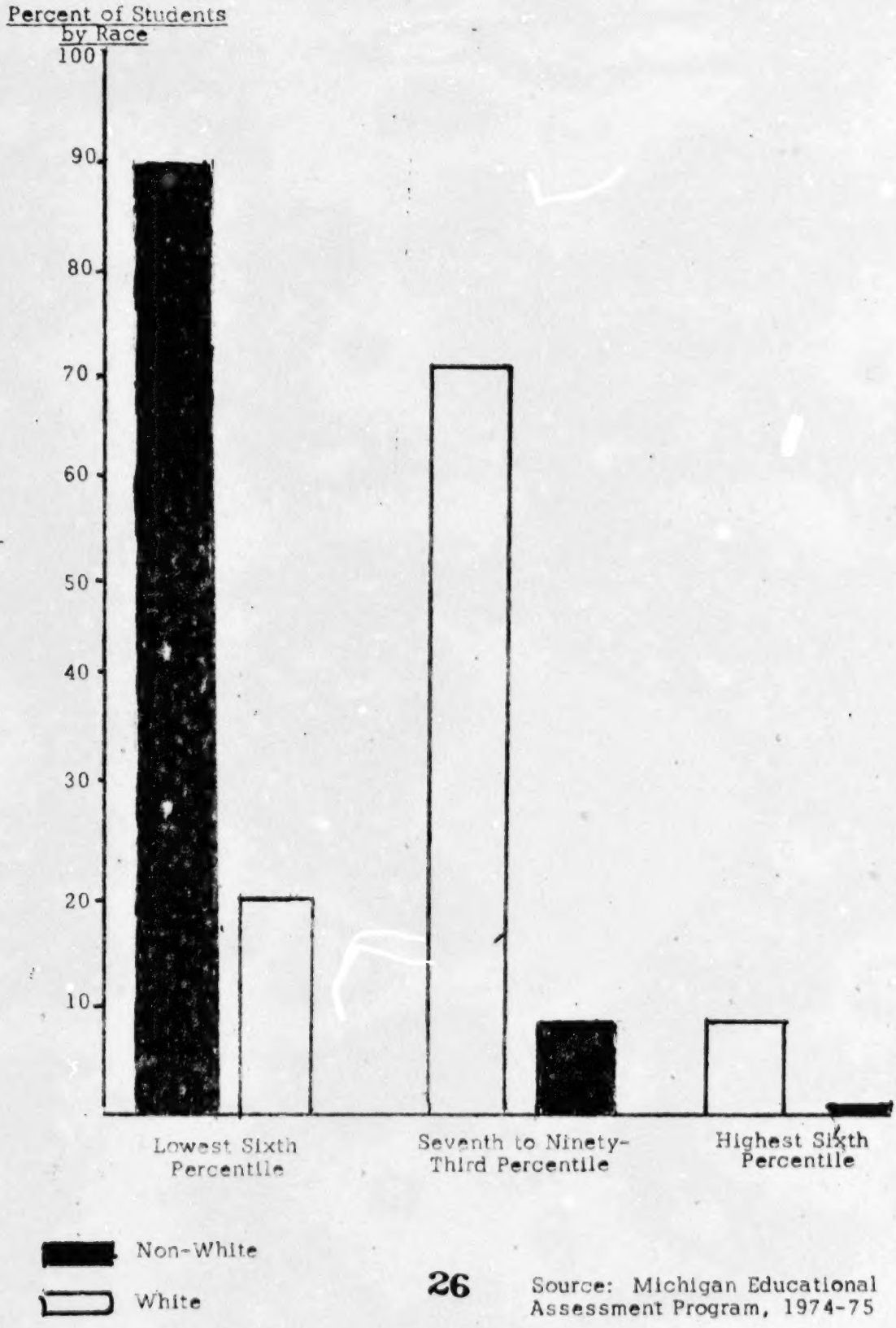
Finally, the use of statistical data to test the constitutionality of State acts and practices which have a racially discriminatory result is widely accepted by the courts in both education and other areas as well. Moreover, proof of discriminatory motive or intent is not required in such cases, particularly where the system under scrutiny is one decreed by the Legislature.

IV. CONCLUSION

The analysis and data presented in Section II indicates that the Michigan system for providing certain important public education services, specifically teachers and professionals, delivers those services in a way that produces significant disparities between minority and white students. The legal analysis, Section III, clearly demonstrates that such a system is constitutionally defective unless the State can show the disparity is the necessary by-product of furthering some compelling State interest. It is difficult to conceive of any compelling necessity which justifies this unequal treatment of minority students. Consequently, the present system for providing educational services in Michigan most probably violates the equal protection clause of the U.S. Constitution.

TRI-COUNTY DISTRIBUTION OF STUDENTS
BY LOCAL DISTRICT CLASSROOM
TEACHERS PER 1,000 PUPILS

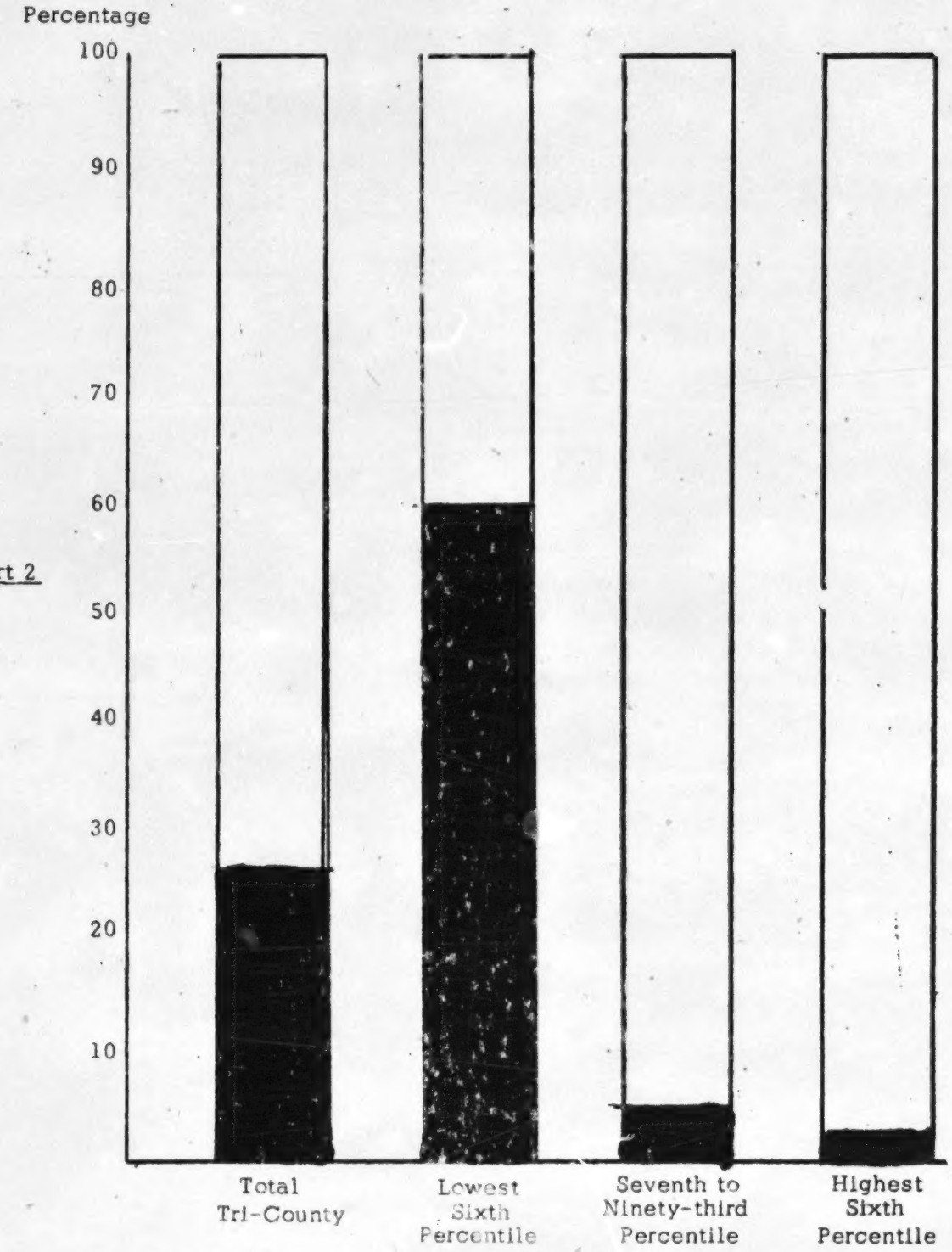
Chart 1



Source: Michigan Educational Assessment Program, 1974-75

RACIAL COMPOSITION OF STUDENTS BY LOCAL DISTRICT
CLASSROOM TEACHERS PER 1,000 PUPILS PERCENTILE
RANKING IN TRI-COUNTY AREA

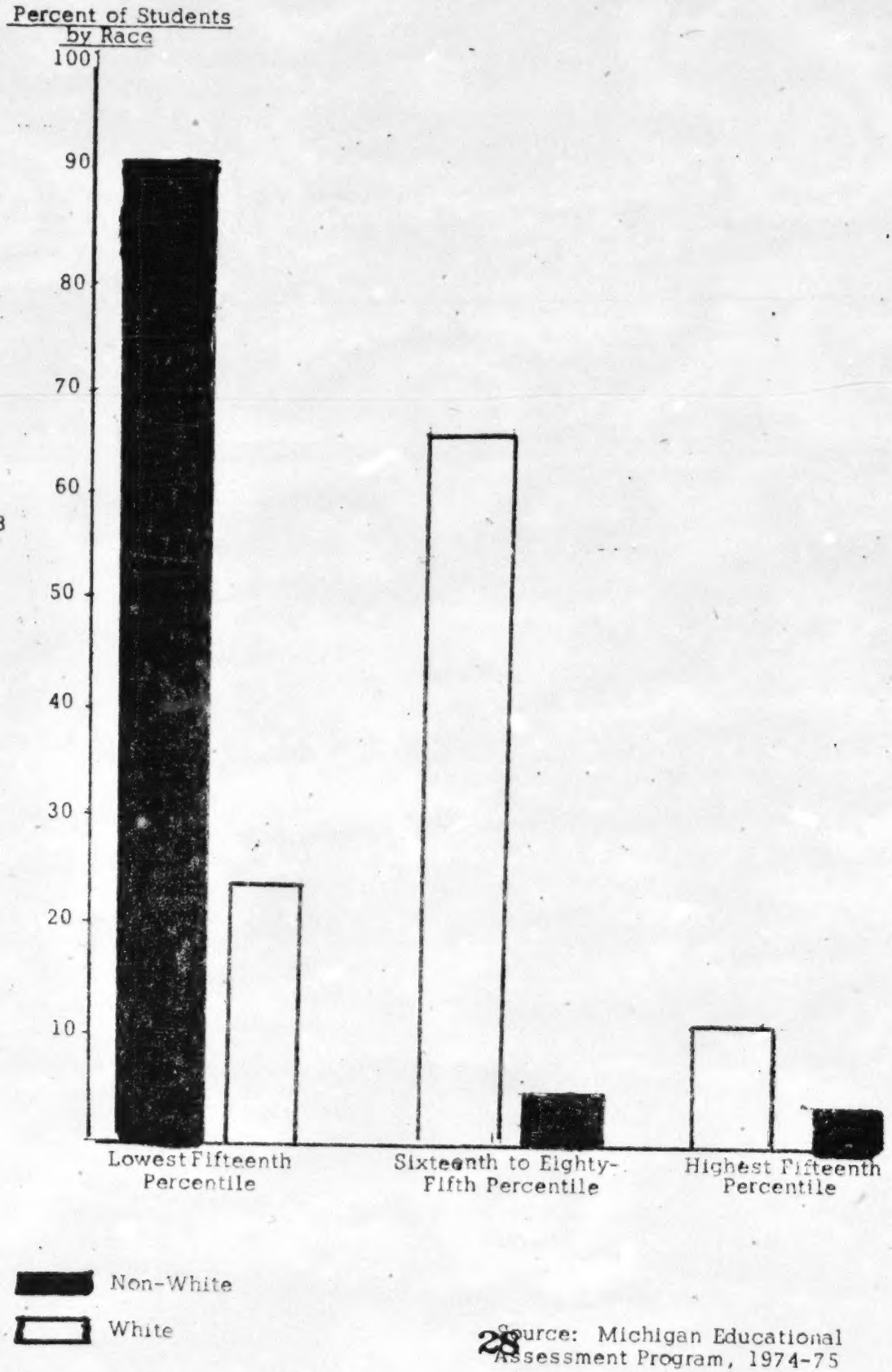
Chart 2



Source: Michigan Educational Assessment Program 1974-75

TRI-COUNTY DISTRIBUTION OF STUDENTS
BY LOCAL DISTRICT PROFESSIONAL STAFF
PER 1,000 STUDENTS

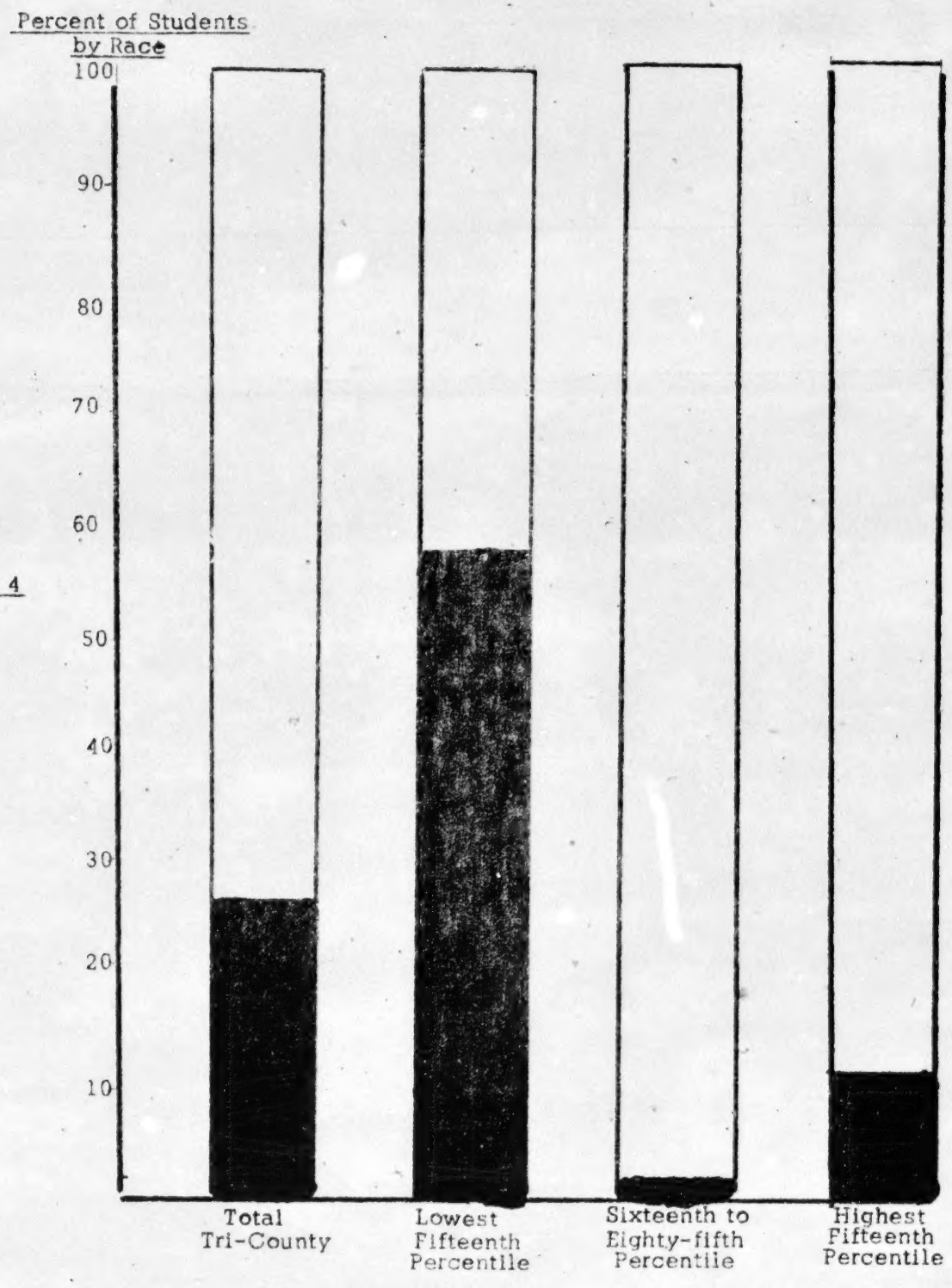
Chart 3



Source: Michigan Educational Assessment Program, 1974-75

RACIAL COMPOSITION OF STUDENTS BY LOCAL DISTRICT
PROFESSIONAL STAFF PER 1,000 PUPILS PERCENTILE
RANKING IN TRI-COUNTY AREA

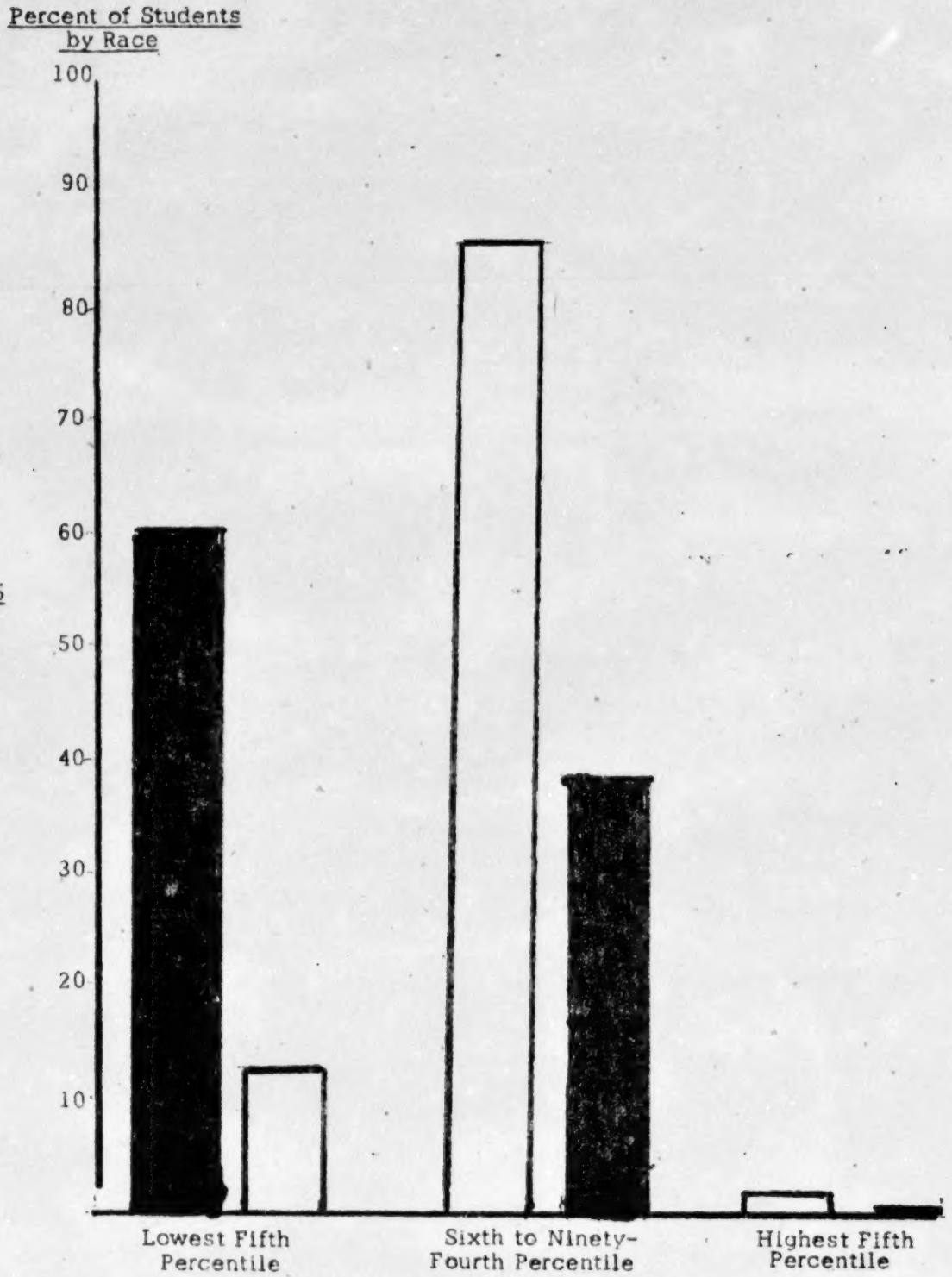
Chart 4



Source: Michigan Educational Assessment Program, 1974-75

MICHIGAN DISTRIBUTION OF STUDENTS
BY LOCAL DISTRICT CLASSROOM
TEACHERS PER 1,000 STUDENTS

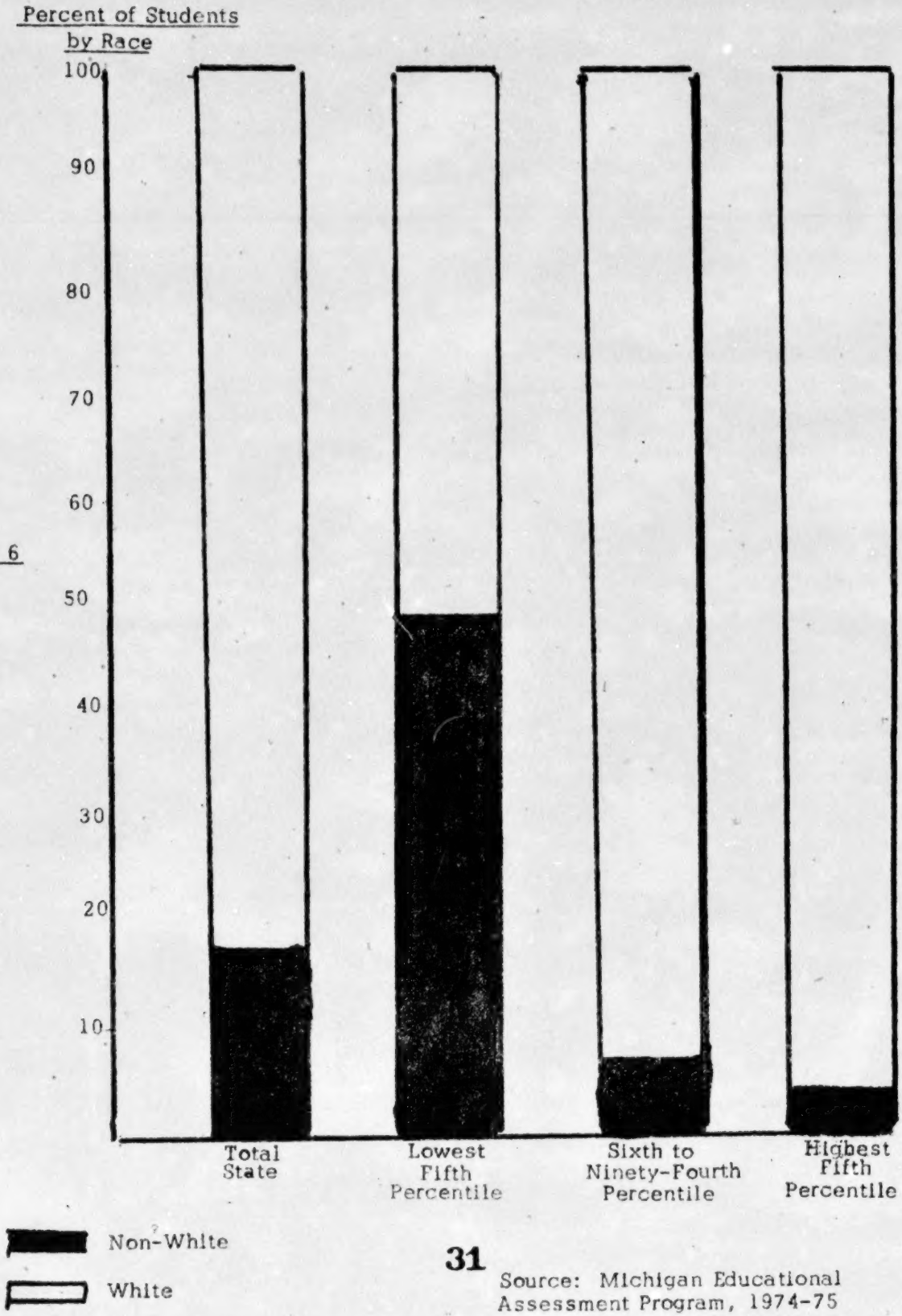
Chart 5



Source: Michigan Educational Assessment Program, 1974-75

RACIAL COMPOSITION OF STUDENTS BY LOCAL DISTRICT CLASSROOM TEACHERS PER 1,000 PUPILS PERCENTILE RANKING IN MICHIGAN

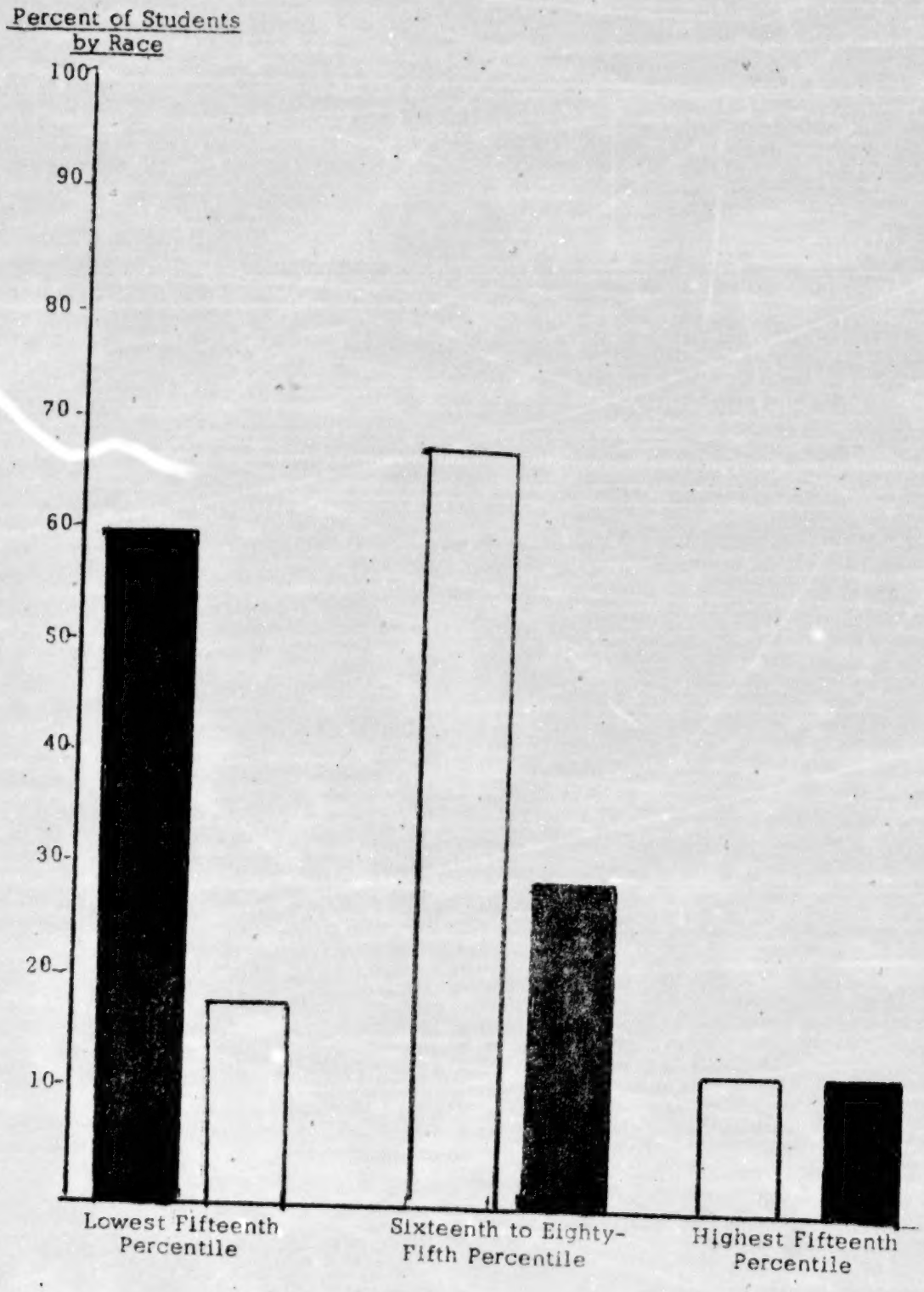
Chart 6



Source: Michigan Educational Assessment Program, 1974-75

MICHIGAN DISTRIBUTION OF STUDENTS BY
LOCAL DISTRICT PROFESSIONAL STAFF
TEACHERS PER 1,000 PUPILS

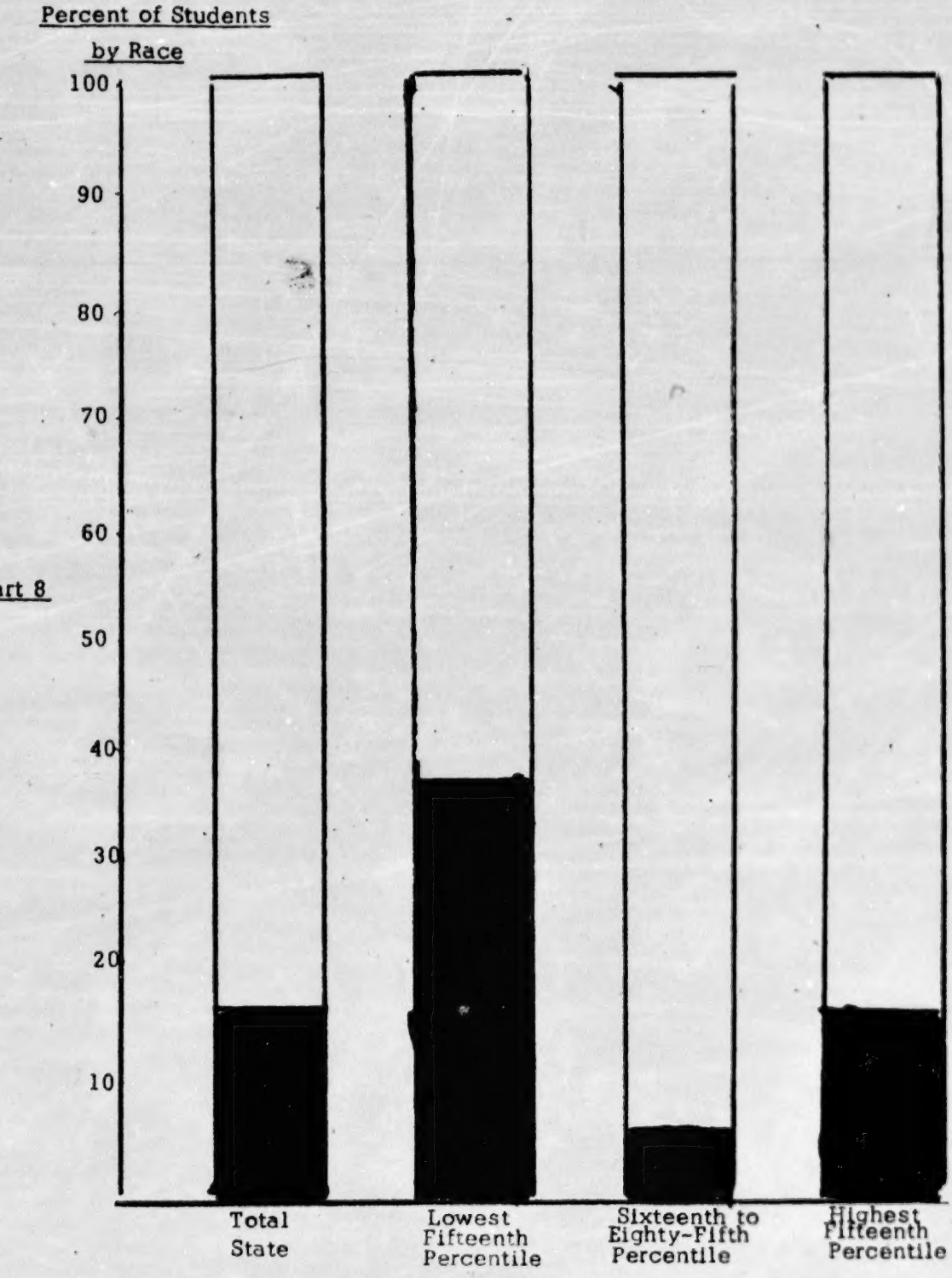
Chart 7



Source: Michigan Educational Assessment Program, 1974-75

RACIAL COMPOSITION OF STUDENTS BY LOCAL DISTRICT
PROFESSIONAL STAFF PER 1,000 PUPILS PERCENTILE
RANKING IN MICHIGAN

Chart 8



Source: Michigan Educational Assessment Program, 1974-75